

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: . Chapter 11
WINC INC., *et al.* . Case No. 22-11238 (LSS)
Debtors. . (Jointly Administered)
August 3, 2023
10:00 a.m.

TRANSCRIPT OF HEARING BEFORE
THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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Confirmation of Combined Disclosure
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PLAN AND DISCLOSURE STATEMENT APPROVED

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DECLARATIONS ADMITTED INTO EVIDENCE

Young Declaration

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Brault Declaration

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1 (Recorded proceedings commence at 10:00 a.m.)

2 THE CLERK: Please rise.

3 THE COURT: Please be seated. Good morning.

4 MS. MIELKE: Your Honor, good morning. May it please
5 the court, Alison Mielke from Young Conaway on behalf of the
6 debtors.

7 I'm joined today by my colleagues, Matthew Lunn, Josh
8 Brooks and Stella Borovinskya, as well as the debtors' former
9 CFO, Carol Brault. Also with us is Kevin Pleines from RPA
10 Advisors. And then to your far left is Emily Young with Epiq
11 Restructuring.

12 We are here today to present approval of the debtors'
13 chapter 11 Plan. We can report, not to bury the lead, that in
14 consultation with the committee we have resolved the two
15 responses that we received to the plan and that we did receive
16 all the requisite votes for the plan. So we believe that we
17 are going forward today on a fully consensual basis.

18 THE COURT: Okay.

19 Unless Your Honor would prefer a different order of
20 operations, our plan is to give you a very brief sort of
21 background of where we've been and how we got here, do a quick
22 summary of sort of the plan highlights, go over a summary of
23 the 1129 factors, and then address any of the Court's comments
24 or concerns.

25 THE COURT: That's fine.

1 MS. MIELKE: All right. So by way of a brief
2 background, Your Honor, the debtors, or Winc, is a publicly
3 held emerging growth company that utilized data analysis to
4 quickly develop their own propriety wine brands. They were
5 based in Santa Monica, California. They had a distribution
6 center in California as well as in Pennsylvania. Their assets
7 comprised primarily wine inventory, contracts and intellectual
8 property including their five core wine brands.

9 Prior to the petition date, the debtors focused on
10 expanding their product line and scaling their business for
11 profitability. But they were never able to generate sufficient
12 revenue to cover their operating expenses and support their
13 business. As a result they were reliant on debt financing and
14 equity financing to support the operations.

15 Last spring, facing a looming maturity on their
16 prepetition credit facility, they started a marketing process
17 to assess viable alternatives. They retained Canicord
18 (phonetic) to commence that process. And then in parallel they
19 also continued to seek third party financing.

20 They ultimately were unsuccessful in finding third
21 party financing. But at the end of the nine month marketing
22 process, they did identify a bidder for a going concern sale of
23 their assets and operations.

24 Talks commenced to do an out of court merger
25 transaction. But with the debtors' dwindling liquidity it was

1 determined that the most viable option was to do the
2 transaction through an in court 363 sale process.

3 That potential bidder was identified as a stalking
4 horse bidder. As Your Honor is aware, we did an in court
5 marketing process that was short but fulsome. And we did close
6 the sale to the stalking horse bidder for \$11 million and
7 consideration.

8 That consideration, the credit bid as a result of
9 that and then the additional consideration was sufficient to
10 pay off the prepetition credit facility as well as the DIP
11 obligations with some remaining cash.

12 With that sale process completed and with the
13 proceeds in hand, the debtors and the committee worked together
14 to create a joint chapter 11 plan to liquidate the remaining
15 assets of the company.

16 Just a couple of just facts. With respect to the
17 sale, the sale did result in a going concern sale, and so
18 employees who were not, who were offered employment and chose
19 to accept that employment were given an opportunity for
20 continued employment. Go forward vendors were able to have a,
21 you know, go forward business partner. The sale also resulted
22 in the assumption of significant liabilities including the
23 debtors' gift card subscription liabilities and subscription
24 credit liabilities which were both very significant.

25 On June 27th Your Honor entered an order approving

1 among other things the combined DS on an interim basis, the DS
2 and plan, and establishing certain solicitation procedures.
3 That solicitation commenced in July. Under the plan, holders
4 of priority non-tax claims and secure claims are paid in full
5 and are unimpaired; therefore, those votes were not solicited.

6 We also did not solicit votes for administrative
7 expense claims or priority tax claims which are also paid in
8 full under the plan.

9 We did not solicit Class 4 intercompany claims or any
10 of the classes of equity interests. So the only voting class
11 was class 3 which is the general unsecured claims. Those, the
12 holders of those claims are entitled to a pro rata share of the
13 liquidated assets after payment of trust expenses, etc.

14 With that background, Your Honor, there are a number
15 of pleadings, affidavits and declarations related to the
16 solicitation and plan process that are on file with the Court.
17 These include Ms. Young's declaration regarding solicitation
18 and vote tabulation. And that's located at Docket No. 445.

19 Additionally, Ms. Brault's declaration in support of
20 confirmation is Docket No. 446.

21 Both witnesses are present and in the courtroom and
22 are prepared to answer any questions that any party in interest
23 or the Court may have.

24 In addition, there are various affidavits of service
25 relating to voting materials and solicitation and the notice of

1 the hearing that was sent to all parties in interest in this
2 case. Those affidavits are located at Docket Nos. 413 and 415.

3 At this time, I'd ask that those documents which
4 again are Docket Nos. 413, 415, 445 and 446 be admitted into
5 evidence.

6 THE COURT: Does anyone object?

7 [no audible response]

8 THE COURT: I hear no one. And those documents are
9 admitted without objection.

10 (Young and Brault Declarations admitted into evidence.)

11 MS. MIELKE: Thank you.

12 As I'm sure that Your Honor has seen, Ms. Young's
13 declaration provides that approximately 89 percent of holders
14 of general unsecured claims voted in favor of the plan. There
15 were three votes that were voting to reject. And those parties
16 voted approximately 99.9 percent of the amounts captured in
17 that class.

18 As demonstrated by Ms. Young's declaration, two
19 ballots were rejected due to deficiencies that prevented Epiq
20 from tabulating those votes. One was late and the other did
21 not have a vote indicated.

22 Ms. Young's declaration as well as the affidavits of
23 service established that the solicitation materials were served
24 in accordance with the solicitation procedures order. IN
25 particular, a flash drive of the combined plan and DS as well

1 as the solicitation procedures order, a ballot and a
2 confirmation hearing notice as well as a prepaid return
3 envelope were sent to holders of claims on the general
4 unsecured class.

5 The confirmation hearing notice and the notice of
6 non-voting status was sent to holders of claims in the non-
7 voting classes. The solicitation package, so the initial
8 package that I just referenced, without a ballot or a prepaid
9 envelope was sent to all of the parties on the core 2002
10 service list. And then the confirmation hearing itself was
11 sent in addition to all of the services I just mentioned the
12 entire creditor matrix including more than 130,000 former
13 customers which was done by email.

14 Prior to the objection deadline, the debtors did
15 receive two responses. One was from the IRS and the other was
16 an informal response from the Pennsylvania Department of
17 Revenue. They were both very similar substantively. We did
18 work with both of those parties.

19 The IRS, we included some language into the proposed
20 order which I'm sure Your Honor has seen, and the IRS has since
21 withdrawn its objection and the informal comment that I
22 received from the Pennsylvania Department of Revenue has been
23 resolved.

24 The plan proponents' proposed confirmation order was
25 filed at Docket No. 449. That addresses the standards of

1 sections 1129(a) and (b). Mrs. Brault who is present today and
2 in the courtroom would be prepared to testify to the various
3 elements of sections 1129(a) and (b) consistent with the
4 statements in her declaration.

5 Based on that testimony, the plan proponents submit
6 that the elements of sections 1129(a) and (b) have been met in
7 this case. In particular, the plan proponents have negotiated
8 the plan in good faith and solicited the plan in good faith and
9 consistent with this Court's orders and the bankruptcy code and
10 rules.

11 The plan has not been offered for purposes of
12 avoiding taxes. The plan and the plan supplement set forth in
13 sufficient detail the individuals who will be responsible for
14 effectuating the plan and the terms of their compensation.

15 Also as set forth in the voting declaration, the plan
16 may be confirmed, or excuse me, the debtors have obtained the
17 requisite votes for accepting the plan.

18 In addition, the plan can be confirmed under section
19 1129(b) despite the deemed rejection of classes 4, 5(a), 5(b)
20 and 5(c) because no junior class will receive any property
21 under the plan.

22 To the extent the Court requires additional argument
23 on any of these arguments, the plan proponents are prepared to
24 further explain how those requirements are satisfied in this
25 case. If the Court, however, is satisfied with the record as

1 presented with respect to the declarations and the affidavits
2 on file, then we respectfully request that the Court enter the
3 order.

4 THE COURT: Thank you.

5 Does anyone wish to be heard?

6 MR. KESSELMAN: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. KESSELMAN: Justine Kesselman, ArentFox Schiff on
9 behalf of the official committee of unsecured creditors, here
10 today with my colleagues and co-counsel, James Britton, Anthony
11 Saccullo, and Mark Hurford.

12 Also in the courtroom today are the proposed creditor
13 trustee, Brian Rineker (phonetic) and the proposed post-
14 confirmation debtor representative, Brian Ayers.

15 I'm going to cede the podium to my colleague to make
16 a statement in support of the plan. But before I do, I'd like
17 to thank counsel and the financial advisors for the debtors,
18 their consummate professionalism throughout the case in
19 reaching, you know, an agreed and joint plan today; Ms. Leamy
20 from the Office of the U.S. Trustee for closely following this
21 case, working with the parties to resolve concerns throughout
22 the way; and of course thanking the Court, chambers and Your
23 Honor for the guidance for giving the parties the opportunity
24 to resolve disputes, and get this plan before the Court that we
25 believe is in the best interest of the estate and creditors.

1 And I'll cede the podium to Mr. Britton.

2 THE COURT: Thank you.

3 Mr. Britton?

4 MR. BRITTON: Good morning, Your Honor, James Britton
5 of ArentFox Schiff appearing on behalf of the Official
6 Committee of Unsecured Creditors.

7 The Committee supports the plan and is pleased. The
8 result of voting reflects overwhelming creditors' support.
9 Today's result is the product of the committee and debtors
10 finding common ground after challenging aspects of the case
11 involving the DIP, the sale and the critical vendor program.

12 As Your Honor is aware, these efforts culminated in a
13 global settlement among the debtors, the committee, the
14 debtors' prepetition secured lender, and the debtors' stalking
15 horse bidder. That settlement paved the way for this
16 consensual plan where the committee is co-proponent.

17 As Mr. Kesselman said, Mr. Brian Rinecker is the
18 contemplated creditor trustee and Mr. Brian Ayers is the
19 contemplated post-effective date debtor representative are with
20 us in the courtroom today. And the committee would just like
21 to voice its appreciation of the efforts of Young Conaway and
22 of the debtor and the committee's other professionals as well
23 as the courtroom staff and the United States Trustee's Office
24 for making these cases a success, and ask that the Court
25 confirm the plan.

1 THE COURT: Thank you. Anyone else?

2 Ms. Mielke? Let me ask just one question if you can
3 just remind me. I know this was a sale and I see in the plan
4 and as reflected, we have a debtor representative. There was a
5 master services agreement and a transition services agreement.
6 Are they still in effect?

7 MS. MIELKE: They are. And so the way that that
8 works, Your Honor, is that one of the debtor entities, BWSC,
9 will continue to exist and essentially operate in name under
10 the TSA for licensing purposes. And the post-effective date
11 debtor representative will be supervising those operations and
12 ensuring that the TSA is complied with.

13 Under the TSA, the buyer is required to fund the
14 operations of that entity. So there's a means for funding and
15 financing those operations.

16 The outside date of the TSA which we did include in
17 the plan with at the request of Your Honor is January, I don't
18 know the exact date, end of January 2024. That's the outside
19 date. It is also subject to termination at the time that the
20 buyer gets the licensing it needs. And then there's a
21 transition. We anticipate, we're told, that it could be short,
22 by the end of the year. I don't have a viable date to give
23 Your Honor, but we know what the outside date is and we're
24 hopeful that it's shortly after hopefully the plan is
25 confirmed.

1 THE COURT: Okay. Thank you.

2 One other question. There is a list of delayed
3 assumed contracts.

4 MS. MIELKE: Yes.

5 THE COURT: Can you remind me how that works?

6 MS. MIELKE: Sure. So the debtors have slated those
7 for rejection unless the buyer, which I think will be
8 technically is project Crush (phonetic) acquisition company,
9 unless they select those for assumption before the end of the
10 TSA. So those parties have been put on notice of that, that
11 has been, all of the parties associated with assumption of
12 contracts regarding the sale were put on notice in December
13 about the assumption of their contracts. The delayed
14 assumption contracts list was attached to the plan, and it went
15 out to the parties. So that's how that works.

16 THE COURT: Okay. Okay. Thank you.

17 I am prepared to confirm the plan based on the
18 evidence that's submitted by way of the two decelerations that
19 were admitted into evidence, that of Ms. Brault and that of Ms.
20 Young.

21 The debtors' counsel has done a top level walk
22 through of the 1129 factors and I agree with the analysis. The
23 plan, first of all is a joint plan with the committee, it has
24 been proposed and solicited in good faith. It's not offered
25 for an improper purpose. It does list the names of the debtor

1 rep and the creditor trustee, the trust, creditor trust
2 representative.

3 We have an impaired accepting class in Class 3 which
4 accepted overwhelmingly as set forth in Ms. Young's
5 declaration. And the classes that are deemed to reject the
6 plan and did not vote, Classes 4, 5(a), 5(b) and 5(c) can be
7 crammed down under 1129(b). There are no classes below them
8 that are receiving any distributions on account of their
9 claims. This is a liquidating plan so it's feasible and the
10 liquidation analysis does show that under the plan, creditors
11 are receiving at least as much as they would in a chapter 7
12 case.

13 So I think that's a high level on the 1129 factors.
14 I note there are no third party releases in this plan, so we're
15 not addressing that issue. Thank you very much. And there are
16 no outstanding objections. The objections by the United States
17 and the other governmental unit have been resolved by language
18 in the proposed form of order. So this is, the plan is fully
19 consensual in the sense that there are no objections pending.

20 With respect to the delayed assumed contracts,
21 parties received notice multiple times with respect to those
22 contracts and there are no objections with respect to the
23 process that is being used or the timeframe.

24 So I did have I think one or two questions on the
25 form of order, so let's hit those. But as I said, I'm

1 confirming the plan.

2 MS. MIELKE: I'd be remiss, Your Honor, if I didn't
3 say we did get it under 20 pages.

4 THE COURT: Thank you. And I appreciate that as
5 well, and that's even with the resolutions.

6 My first comment is paragraph 15. And this is the
7 1146 paragraph. I would like it to mirror the code. I think
8 it goes beyond that and since it affects third party
9 governmental entities across the board, it should just mirror
10 the code.

11 And then my only other comment is on I think it's new
12 paragraph 29, newly numbered paragraph 29. The last sentence
13 is forward looking and deals with substantial consummation
14 which I don't think is within my purview. So I'm fine with the
15 first sentence given the debtors authority to consummate the
16 combined disclosure statement and plan but I'm not going to
17 provide prospective thoughts on what might be substantial
18 consummation.

19 MS. MIELKE: Noted, Your Honor.

20 THE COURT: Okay. Other than that, the order is
21 fine. And I will look for a revised form of order with those
22 two changes that reflected my comments.

23 MS. MIELKE: Thank you, Your Honor. We'll make those
24 changes and submit it under certification of counsel.

25 THE COURT: Okay. Thank you.

1 I know, Ms. Batts, I'll let you know I did not have
2 an opportunity to look at fees. I will get to that and
3 hopefully promptly. But I will get to it as soon as I can.

4 MS. BATTS: Thank you, Your Honor, I appreciate it.

5 THE COURT: Okay. Anything further?

6 MS. MIELKE: No, Your Honor.

7 THE COURT: Thank you. We're adjourned.

8 (Proceedings adjourned 10:23 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter to the best of our knowledge and ability.

/s/ Theresa Pullan August 7, 2023
Theresa Pullan, CET-780
Certified Court Transcriptionist
For Reliable